

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel.
MAC WARNER,

Plaintiff,

v.

Civil Action No, 18-C- 162
_____, Judge

SHALE ENERGY ALLIANCE, INC.,
a Delaware Corporation,

Defendant.

COMPLAINT

This action is brought pursuant to the West Virginia Election Code, West Virginia Code §§ 3-1-1 *et seq.* ("Election Code") and the West Virginia Nonprofit Corporation Act §§ 31E-1-101 *et seq.* ("Nonprofit Act"). Plaintiff, the State of West Virginia ex rel. Mac Warner, Secretary of State ("Secretary"), has reason to believe the above-named Defendant Shale Energy Alliance, Inc.¹ ("SEA"), has violated the Election Code and/or the Nonprofit Act. The Secretary brings this action to enjoin and restrain SEA from engaging in transacting business in this State and engaging in unlawful acts as set forth more fully herein. The Secretary seeks preliminary injunctive relief and other equitable relief including, but not limited to, restitution, court costs, investigative costs and attorneys' fees, and civil penalties for each and every violation of the Election Code.

FILED IN OFFICE
JUN 14 2018
CAROLE JONES
CLERK CIRCUIT COURT

¹ Including the officers, directors, or managing or controlling heads thereof pursuant to W.Va. Code § 3-8-13.

PARTIES

1. Mac Warner is the duly elected and current Secretary of the State of West Virginia and the chief election official of the State. W. Va. Code § 3-1A-6. In addition to oversight of election matters, the Secretary's office is the filing office for all nonprofit corporations transacting business in this State. W. Va. Code § 31E-1-125.

2. SEA is a Delaware chartered nonprofit corporation formed on September 14, 2015. It is registered as a 501(c)(4) "social welfare organization" with the Internal Revenue Service bearing FEIN 47-5055505. SEA purports its principal office to be located at 201 East Main Street, Suite 900 Lexington, KY 40507, as well as a mailing address of PO Box 436, Sewickley, PA 15143. SEA registered as a foreign nonprofit corporation with the Secretary's Office on November 5, 2015. However, the corporation's registration was revoked by the Secretary on November 1, 2016 for failure to comply with reporting requirements. The entity was administratively dissolved in this State and unable to lawfully transact business herein. At the time of dissolution, the Directors were listed as Matt Koch and Todd Forrester. In recent filings, Robin Teets ("Teets") acted in an agent capacity on behalf of SEA in transacting business in this State.

JURISDICTION AND VENUE

3. Jurisdiction and venue for this proceeding are proper in the Circuit Court of Wood County as acts in violation under the Act occurred therein as well as SEA having transacted business therein.

CONDUCT ALLEGATIONS

4. At all pertinent times, Teets acted individually and as a duly authorized agent, servant and/or employee of SEA and in furtherance of the business of said SEA.

5. SEA did business in the State of West Virginia; made contracts to be performed in whole or in part in this State; entered into contracts in violation of the Election Code and/or Nonprofit Act; failed to register as a political action committee ("PAC") pursuant to W. Va. Code § 3-8-4(a); and failed to disclose its contributions and expenditures, all of which SEA knew to be unlawful.
6. SEA continued to engage in such conduct after due and proper notice, which SEA knew would negligently and intentionally cause injury to persons within the State, and committed tortious and other unlawful acts in the State.
7. On or about April 30, 2018, the Secretary was made aware that SEA had engaged in making independent expenditures ("IE") as defined by the Election Code, by sending mailings to citizens and voters of this State which expressly advocated for the defeat of a clearly identified candidate. A review of the records of the Secretary revealed that SEA had not registered as a PAC as required by W. Va. Code §§ 3-8-2 and 3-8-4(a). Additionally, the Secretary conducted research and determined the organization is also not registered as a PAC with the Federal Election Commission ("FEC"). It was determined the organization was organized as a 501(c)(4) organization.
8. On May 1, 2018, the Secretary issued a Notice to SEA requesting them to provide records showing their timely and lawful registration as a PAC with the Secretary or the FEC. If no such records existed, based on the content of the communications, the organization was requested to immediately cease and desist in such conduct. The Notice was issued by electronic and certified mail.
9. In response to the Notice, the Secretary was contacted by several compliance attorneys from the law firm of Skadden, Arps, Slate, Meagher & Flom LLP. The Secretary was also contacted by Teets requesting access to file online reports through the Secretary's Campaign Finance Reporting System ("CFRS"). Teets subsequently reported expenditures in eight (8) basic

independent expenditure reports through the CFRS. Nevertheless, no filings were made to disclose SEA's electioneering communications as required by W. Va. Code § 3-8-2b, or detailing SEA's accounts and financial statements as required by W. Va. Code § 3-8-5. Further, no filings were made to bring SEA into compliance in the business division. Further, SEA was precluded in filing as a PAC because the twenty-eight (28) day deadline for filing had passed on April 10, 2018, as prescribed in W. Va. Code § 3-8-4(a).

10. On May 2, 2018, the Secretary became aware of television advertisements airing on Suddenlink Cable Networks advocating the defeat of the same clearly identifiable candidate. These communications were broadcast to citizens and voters of this State for the purpose of influencing their vote. In response to this knowledge, the Secretary contacted Suddenlink and obtained copies of the advertisement and contractual documents relating to the agreement between SEA and Suddenlink. The advertisements began broadcasting *after* the Notice to SEA was delivered and acknowledged, and involved much larger expenditures than SEA disclosed to the Secretary.

11. On May 4, 2018, the Secretary was contacted by David K. Hendrickson, who indicated he represented SEA. He requested a meeting to discuss the issues on May 7, 2018. The meeting was held with Mr. Hendrickson expressing his frustration that the ads continued after direction to discontinue. He also assured the Secretary that SEA would become compliant with their corporate status. On the same date, a letter memorializing the meeting was drafted by the Secretary and an offer of settlement was made to resolve the violations of the Election Code and Nonprofit Act. The offer had a deadline of mid-day on Election Day, May 8, 2018.

12. On May 10, 2018, counsel for SEA indicated a willingness to comply with the offer, but required more time to complete the actions necessary to resolve tax issues on behalf of the

corporation. The Secretary provided an option to expedite the services necessary to gain lawful authority in this State. That gesture remains unanswered.

13. Despite actual and constructive knowledge by SEA, Teets has continued to file incomplete independent expenditure reports indicating they expended funds against a clearly identified candidate on multiple occasions between May 1, 2018 and May 10, 2018. This conduct in direct contravention of clear statutory mandates, a cease and desist demand, an in-person meeting, an offer of compromise, and all other attempts to mitigate the issues. All of the conduct described herein is violative of the Election Code and/or the Nonprofit Act.

COUNT ONE

VIOLATION OF THE ELECTION CODE

14. The Secretary realleges and incorporates herein the foregoing allegations of this Complaint.

15. The State Legislature enacted the Election Code to provide fair election administration. Moreover, the Election Code seeks to promote transparency in reporting of funds received and expended to influence the electorate of this State. The Secretary is specifically charged with the administration and enforcement of the Election Code, and may act by initiating civil proceedings of this nature to enforce the provisions therein.

16. The actions of SEA constitute violations of the Election Code in that the organization engaged in independent expenditures in this State; financed express electioneering communications against a clearly identifiable candidate with intent to influence the voting populace of this State; were not registered as a PAC and did not register prior to the April 10, 2018 cut-off date; did not file sworn itemized statements detailing each of SEA's independent expenditures, electioneering communications, and financial accounts; were not exempt from filing

with the Secretary as an FEC-regulated committee; were not exempt from requirements to disclosure their independent expenditures, electioneering communications, or verified financial statements; and continued to engage in such conduct after due and proper notice, all of which constitute separate and distinct violations of the Election Code, including but not limited to W. Va. Code §§ 3-8-2, 3-8-2b, 3-8-4, 3-8-5, and 3-8-7 .

COUNT TWO

VIOLATION OF THE NONPROFIT ACT

17. The Secretary realleges and incorporates herein the foregoing allegations of this Complaint.

18. The State Legislature enacted the Nonprofit Act to allow for the registration of foreign and domestic corporations which are engaged in social welfare activities. The Secretary is similarly charged with administration and enforcement of this Act.

19. The actions of SEA constitute violations of the Nonprofit Act in that the organization transacted business in this State by entering into contracts with businesses in this State to perform certain work; by failing to comply with reporting requirements in 2016; by continuing to engage in business activities in this State after revocation and administrative dissolution; by disregarding the actual and constructive Notice issued by the Secretary; all of which constitute separate and distinct violations of the Nonprofit Act, including but not limited to W. Va. Code §§ 31E-14-1401, 31E-14-1402, and 31E-14-1431.

PRAYER FOR RELIEF

20. Wherefore, the Secretary prays for relief and judgment against SEA, as follows:

a. Civil and administrative penalties as provided by W. Va. Code §§ 3-8-7(b)(1) and 31E-14-1402(d).

b. A temporary and permanent injunction against SEA to prohibit them from engaging in the unlawful activities described herein and establishing a \$5,000.00 fine for each infraction thereof;

c. Damages in an amount which is sufficient to provide restitution and repay the State for the sums the State has expended in attempting to correct, mediate, and now prosecute this action, including but not limited to the State's reasonable investigative and attorneys' fees and other costs of this action;

d. For such other and further extraordinary equitable and/or injunctive relief as permitted by the Election Code and/or Nonprofit Act or by law as necessary to assure that the State has an effective remedy; and

e. For such other further relief, as the Court deems just and proper, to which the State may be entitled.

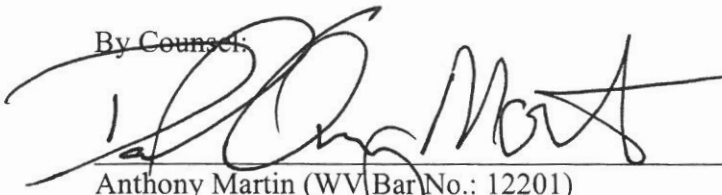
JURY DEMAND

THE PLAINTIFF/PETITIONER DEMANDS A TRIAL BY JURY.


Respectfully submitted,

MAC WARNER
SECRETARY OF STATE

By Counsel:

A handwritten signature in black ink, appearing to read 'Anthony Martin', is written over a horizontal line.

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